


FB  
EXH  
4

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 29th day of March, 2005.

  
Jason Lopez

Federal Communications Commission	
Docket No. <u>07-191</u>	Exhibit No. <u>4</u>
Presented by <u>ED</u>	
Disposition	Identified <u>5/26/05</u>
	Received <u>6/10/05</u>
	Rejected _____
Reporter <u>E. Stadelik</u>	
Date <u>5/16/05</u>	

FCC ENFORCEMENT BUREAU  
2005 APR -5 P 2:34  
INVESTIGATIONS &  
HEARINGS DIVISION

## TESTIMONY OF JASON LOPEZ

1. My name is Jason Lopez. I am currently a freelance radio and print journalist, and radio producer. I work for a number of companies and nonprofit organizations, which include NPR, Minnesota Public Radio, Latino USA, NewsFactor.com, and the East Bay Business Times. I have resided in the San Francisco area since 1993.
2. Between 1993 and 1999, I worked at public radio Station KALW(FM), San Francisco, California ("KALW") as a paid part-time on-air announcer. When my civil service status lapsed in 1999, I stopped working for the San Francisco Unified School District ("SFUSD"), the licensee of Station KALW. I produced on a volunteer basis "Don Giovanni Overdrive," a one-hour music program that aired one night per week on the station. The station discontinued the program in October of 2004. During that period I also worked for commercial Stations KGO, San Francisco and KBPA, Palo Alto.
3. Prior to my employment at Station KALW, I was the general manager ("GM") for public radio Station KTPR, Fort Dodge, Iowa, from 1989 through 1993. Prior to that, I was a program director at public radio Station KRWG, Las Cruces, New Mexico, from 1988 to 1989, and a program director at public radio Station WSHU in Connecticut from 1985 through 1988.
4. As the GM at Station KTPR I was responsible for creating program lists – which had to be updated quarterly – and writing the materials required to be in the public file. As GM, I also was responsible for updating KTPR's ownership reports, each one of which took only about 15 minutes to complete. I educated myself on the FCC's public file requirements by reading the FCC rule book and as well as readily available guides published by public radio support organizations.

5. I was not aware of the status of KALW's public file when I first started working at the station. I had no role in maintaining the file or creating or providing documents for the file. But because of my prior management experience I was familiar with a station's *obligation to maintain its public file.*

6. In 1997, I was one of the three founding members of the board of directors of Golden Gate Public Radio ("GGPR"), a non-profit public benefit corporation organized on March 13, 1997, within the meaning of section 501(c)(3) of the Internal Revenue Code and registered with the State of California as of May 27, 1997. I drafted GGPR's articles of incorporation.

7. GGPR was formed after the KALW Task Force ("Task Force") – a group appointed by SFUSD's School Board – determined, in March 1996, that SFUSD could no longer make direct financial contributions to the station's budget. The Task Force also found that the station was adrift and not being governed well. They concluded that the School Board had little time and energy to govern KALW and that no matter how well-meaning and conscientious the commissioners of the School Board are, they have neither the time nor the expertise to ensure that the educational mission of KALW is realized. The Task Force further concluded that remaining without an active governance structure would be the worst possible scenario for the future of KALW. Accordingly, the Task Force recommended that an active governance structure be created to oversee KALW.

8. Part of the mission of GGPR was to foster the talents of radio producers within and outside of KALW, and to develop and distribute new programming. Another reason GGPR was formed was to revive dialogue sparked by the Task Force report, which appeared to have been forgotten soon after it was published. In light of that report,

GGPR proposed to SFUSD that it would essentially hand control of itself over to SFUSD to become the active governance structure of KALW and GGPR founders would resign.

9. On July 28, 1997, I personally inspected KALW's public file. I looked at every document that had been placed in the drawer that housed the station's public file. In fact, I believe I looked in two drawers of the cabinet in which the file was located. I did not see any program guides, nor did I see any lists that were based on NPR programming. In the station's "issues" folder I found a list marked "7-23" of topics of an unidentified program. Specifically, the list consisted of three pages paginated "5," "6," and "7" and appeared to contain topics covered by a program called "City Visions." I photocopied these pages and eventually included them as Exhibit O of GGPR's Petition to Deny SFUSD's renewal of Station KALW(FM) ("Petition"). After copying pages 5-7, I returned the document to the folder. I do not know who wrote "7-23" in the upper right hand corner of page 5. I did not see pages 1-4 in the file. There were no other reports in the file dated later than June 1992.

10. In my review of KALW's public file I did not find copies of the station's ownership reports for 1993 or 1995. The School Board and the Superintendent are the persons who govern and control SFUSD, the licensee of Station KALW. Every other year, some, but not all, of the School Board members' positions are slated for election. Although only a few positions may actually change in alternate years, the station should have filled out and filed a new ownership report following each election when new individuals were elected to serve on the Board.

11. Some time in August or September of 1997, Mel Baker, a fellow member of GGPR, and I approached Jill Wynns, then a member of the School Board, and advised her that the station was poorly managed. We also advised her that the public file at

KALW was missing reports, such as the station's ownership reports. Around that same time we also spoke to other members of the Board – Carlota del Portillo, Mary Hernandez and Dan Kelly – about ongoing problems with the management of the station as well as the missing reports. On September 16, 1997, Mel and I met with Mr. Kelly and provided him with a list of problems affecting the station, notably that the station's renewal application contained material and willful false statements regarding the maintenance of the public file. As far as I know, neither Mr. Kelly nor any of the Board members have acted on the concerns communicated to the Board by GGPR.

12. In light of SFUSD's neglect of the Task Force report and SFUSD's lack of response to the problems identified by GGPR, on November 3, 1997, GGPR filed a Petition to Deny the renewal of SFUSD's license for KALW ("Petition"). I drafted the Petition, and Deirdre Kennedy, then a member of GGPR, and Alan Korn, an attorney, helped edit the pleading. I note that GGPR took such action after careful consideration of the serious ramifications of SFUSD's ongoing benign neglect of KALW and its inability to hire general managers who, at least, could understand and comply with FCC rules.

13. The Petition was based, in part, on the station's false certification of the renewal application filed in 1997. Specifically, GGPR believed and alleged that KALW's public file did not contain the requisite ownership reports and program lists that should have been included in the file for the renewal period. Moreover, GGPR believed and alleged that KALW's then-general manager, Jeffery Ramirez, knew this when he prepared the application and sent it the FCC for filing. Nevertheless, SFUSD certified on the renewal application dated July 30, 1997, that the station had filed the required ownership reports with the Commission and that the station's public files contained the requisite ownership reports and issues/program lists at the appropriate times by checking the "yes" box to

Question 2, page 3, of FCC Form 303-S. Based on my own personal review of the station's public file in July 1997, coupled with affidavits from Susen Hecht and Dave Evans, I believed that, as described above, the public file for Station KALW did not, in fact, contain the required documents.

14. Susen Hecht was a volunteer at the station in 1997. Her current whereabouts are unknown to me at this time. In her October 28, 1997, declaration, which is attached to the Petition as Exhibit D, Ms. Hecht states that she had been a volunteer at KALW for four years and that, in June 1997, Jeffery Ramirez, then-GM for the station, had asked her to review the public inspection files in anticipation of the renewal. Ms. Hecht further states that she found the files disorganized and incomplete, and that in June of 1997 she created and provided Mr. Ramirez with a list entitled "License Renewal Materials - In Files at Present." That list did not contain reference to any ownership reports dated after January 31, 1991. Ms. Hecht noted that the "Program List" file was empty, and that the "Problems & Programs Spring '92" file contained a complete 1991 list, an incomplete 1992 list (winter and spring only) and a partial list for the years 97-89. Ms. Hecht told me that she had given her list of the public file to Mr. Ramirez.

15. Ms. Hecht's description of the status of KALW's public files in June 1997 mirrors what I observed of the file in July 1997. Although I do not know exactly what Ms. Hecht meant when she indicated "partial" for the list covering the period 1989 to 1997, the only document I saw relating to programming after 1992 was the list of topics aired on the City Visions program.

16. I do not recall who, if anyone, helped draft Ms. Hecht's declaration.

17. Based on my interactions with Ms. Hecht, I was able to form an opinion as to her honesty. My opinion of Ms. Hecht is that she was truthful.

18. As noted, Mr. Evans, the station's chief engineer, provided an affidavit that was dated October 28, 1997, and was included in the Petition as Exhibit C. In his affidavit, which he drafted, Mr. Evans stated that during the last week of August 1996 he met with Mr. Ramirez. Mr. Evans stated that he told Mr. Ramirez the public inspection file was "a mess" and that it needed his immediate attention. Mr. Evans further stated that he told Mr. Ramirez the Ownership Reports and quarterly issues reports had not been filed.

19. Based on my personal knowledge of Mr. Evans, I was able to form an opinion as to his honesty. I believe Mr. Evans was a completely truthful person. I also note that, although he was suffering from AIDS in 1997, Mr. Evans was still able to perform his duties competently. He was involved in a car accident on November 4, 1997 and died in January 1998 as a result of his injuries.

20. On January 20, 1998, SFUSD filed its Opposition to GGPR's Petition. I read the accompanying exhibits and declarations.

21. On February 17, 1998, GGPR filed a Reply to SFUSD's Opposition to the Petition. I drafted the Reply with the help of Mr. Korn. I attached a copy of the 1996 Task Force report to the Reply as Exhibit E. Until SFUSD filed its Opposition, I was not aware that William Helgeson was responsible for maintaining the public file (as was claimed in Mr. Helgeson's declaration attached to the Opposition). I was surprised to learn that Mr. Helgeson would have been responsible for the files because he did not seem reliable in that regard. Specifically, among people who worked at KALW, Mr. Helgeson had a reputation for being disorganized. I recall hearing that he had misplaced checks written to the station by donors and that KALW was nearly fined by the Corporation for Public Broadcasting because he failed to submit required reports to CPB on time.



22. I have seen a copy of the Mass Media Bureau February 2001 letter to SFUSD directing it to respond to questions concerning, in part, the status of the station's public file in 1997. I have also seen SFUSD's April 2001 response to the Bureau and have read SFUSD's response.

23. On May 4, 2001, I filed, on behalf of GGPR, a reply to SFUSD's April 2001 response to the Commission. In response to the Commission's inquiry (1) as to whether "on August 1, 1997 when the subject license renewal application was filed, did the KALW(FM) public inspection file contain all of the ownership and supplemental reports required to be kept by then Section 74.3427," SFUSD stated "yes." SFUSD attached copies of the 1993 and 1995 ownership reports to its 2001 response to the Commission. The 1993 ownership report that SFUSD had attached, however, was inaccurate in that three of the people listed in the report as Board members in 1993 were not actually serving in those positions at that time. The 1995 ownership report that SFUSD attached was dated December 10, 1997. When I inspected the station's file in July 1997, I did not see these documents.

24. In regard to the Commission's inquiry (2) as to whether, on August 1, 1997, "the KALW(FM) public inspection file contain[ed] all of the issues/program lists required by then Section 73.3527," SFUSD stated "yes." SFUSD attached several documents to its response that it claims were filed in the station's public file as of August 1, 1997. One attachment was a program guide for the 2nd quarter of 1997 covering the months April, May and June. I did not see that document in the file when I looked at the file in July 1997. SFUSD also attached a document labeled "Quarterly Issues Report for AIDS UPDATE" that listed air-dates between April 4, 1997, and June 20, 1997. I did not see that document in the file when I looked at the file in July 1997. SFUSD attached a "City

Visions" Quarterly Issues/Programs List 1992-1997 from John Covell. I did not see that document in the file when I looked at the station's public file in July 1997. Finally, SFUSD attached a twelve-page document labeled "Quarterly Issues/Programs Listing - National Public Radio Programs." I do not know the significance of the March 14, 2001, date that appears on the NPR document that SFUSD included as an attachment to its response. I did not see that document in the station's file when I looked at the file in 1997.

25. On September 28, 2004, I was shown a copy of SFUSD's Admissions Responses dated September 7, 2004, and attached exhibits. Attachment 2 to SFUSD's Admissions Response consists of three pages represented to be a copy of the station's 1993 supplemental ownership report required to be filed in the station's public file. I did not see that document in the station's public file when I inspected the file in July 1997. Nor could I have - the 1993 ownership report provided at Attachment 2 to the Admission's Response is dated December 10, 1997.

26. Attachment 4 to the Admissions Responses consists of three pages represented to be a copy of the station's 1995 supplemental ownership report required to be filed in the station's public file. I did not see that document in the file in July 1997. Nor could I have - the 1995 report was signed on December 10, 1997.

27. At no time did I ever remove permanently anything from the KALW's public files. Each time that I took something from the file for copying or review, I returned the item to the file in a timely fashion.

28. I am not aware of anyone who removed files permanently from KALW's public file.

29. Golden Gate Public Radio ceased operating in 1998 and is essentially defunct.